

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

SANDRA R. SMITH,)	
)	
Plaintiff,)	Case No. 1:12-CV-19
)	
v.)	Judge Curtis L. Collier
)	
HEALTH CENTER AT STANDIFER)	
PLACE,)	
)	
Defendant.)	

JUDGMENT ORDER

Before the Court is *pro se* Plaintiff Sandra R. Smith's ("Plaintiff") "Motion to Dismiss" (Court File No. 16). Plaintiff seeks to voluntarily dismiss her case due to health problems and the challenges she has encountered pursuing her case without counsel. While she contends her claims have merit, she does not want to proceed further without counsel. Defendant has filed a response and does not object to Plaintiff's motion (Court File No. 17). Defendant is willing to stipulate to Plaintiff's motion with the understanding that, if she refiles her claim, she must do so within the time frame provided by the applicable savings statute and her claim must be filed with this Court.

Because an answer has already been filed in this case, Plaintiff cannot dismiss the case voluntarily pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i). Moreover, although Defendant is willing to stipulate to dismissal, Plaintiff has not agreed to the conditions requested by Defendant to make the stipulation valid pursuant to Fed R. Civ. P. 41(a)(1)(A)(ii). Rule 41(a)(2) of the Federal Rules of Civil Procedure, however, is still applicable. Under Rule 41(a)(2) "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). This Court recognizes that district courts can impose whatever terms or conditions they consider necessary "to offset the prejudice the defendant may suffer from a dismissal without

prejudice.” *Bridgeport Music, Inc. v. Universal-MCA Music Pub., Inc.*, 583 F.3d 948, 954 (6th Cir. 2009) (citations omitted).

Accordingly, the Court **GRANTS** Plaintiff’s motion (Court File No. 16) and **ORDERS** that this case be **DISMISSED WITHOUT PREJUDICE** under the following conditions, which should adequately protect the interests of the parties:

1. The case must be refiled in the Eastern District of Tennessee before this Court.
2. All previous rulings and entries on the docket for this case must stand.
3. If Plaintiff *prevails* in her refiled suit, she must pay Defendant’s costs and fees for work performed in the first suit that cannot be used in the second suit.

The Court also reminds Plaintiff that, if she does choose to refile this action, it must be filed within the time period permitted by law. As no further matters remain for adjudication, the Court **DIRECTS** the Clerk of Court to **CLOSE** the case.

SO ORDERED.

ENTER:

/s/
CURTIS L. COLLIER
UNITED STATES DISTRICT JUDGE

ENTERED AS A JUDGMENT
s/ Debra C. Poplin
CLERK OF COURT